

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MARJORIE FERRELL, et al.,

Plaintiffs,

V.

**WYETH-AYERST LABORATORIES, INC.,
et al.,**

Defendants.

Civil Action No. C-1-01-447

Judge Sandra S. Beckwith
Magistrate Judge Timothy S. Hogan

**OPPOSITION TO PLAINTIFFS' MOTION FOR AN EXTENSION OF TIME
TO IDENTIFY A NEVADA CLASS REPRESENTATIVE**

Wyeth opposes class counsel's request for an additional 30 days to attempt to locate a Nevada consumer willing to sue Wyeth.

This Court’s order of February 2, 2005 clearly states that “[p]laintiffs shall identify a representative for subclasses 1, 5, and 6 within 30 days and inform the Court and the parties of the representatives’ identity.” 2/2/05 Order at 9. Class counsel has been unable to locate an eligible and willing Nevada consumer (subclass 5) within the Court’s deadline. There is no justification for permitting counsel yet another month to troll the state of Nevada in search of a willing consumer plaintiff. Indeed, counsel’s request for such a substantial extension simply highlights that the Nevada consumer case is simply a lawyer-driven lawsuit in search of a plaintiff — an inappropriate situation to say the least.

Plaintiffs have known for more than eight months (since this Court's order of June 30, 2004) that the Court intended to certify a subclass of Nevada consumers. They have failed to identify a representative for the Nevada consumer subclass within the generous one-month period provided by the Court. Counsels' excuse for non-compliance – that due to the exclusion of consumers who paid “flat co-pays” or fixed costs there are “only a limited number of Premarin consumers [who] are potential members of the subclass” (Pl. Mem. at 2)—simply suggests that the subclass should not be certified at all. Despite a month of searching, plaintiffs have evidently not found a single willing Nevada consumer who fits the subclass definition.

Nor will the rights of Nevada consumers “be prejudiced” (Pl. Mem. at 3) if this motion is not granted and the Nevada consumer subclass is decertified. If there is no Nevada consumer subclass, then Nevada consumers will not be bound by the results of this class action and will be free to pursue any claims that they possess, just like consumers from the 33 other states that are not part of this class action.

Wyeth requests that the Court deny plaintiffs' motion and de-certify the Nevada consumer subclass.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been served electronically this 7th day of March, 2005 on all Counsel of Record with the CM/ECF Registration and by facsimile and overnight delivery on the following:

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